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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,897	08/30/2001	James A. Ringlien	16958 USA	9836

7590 10/10/2003
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EXAMINER

PYO, KEVIN K

ART UNIT	PAPER NUMBER
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2878

DATE MAILED: 10/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/942,897

Applicant(s)

RINGLIEN ET AL

Examiner

Kevin Pyo

Art Unit

2878

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1) ☐ Certified copies of the priority documents have been received.
2) ☐ Certified copies of the priority documents have been received in Application No. _____.
3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 and 5. 6) ☐ Other:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 5, claim 5 recites in lines 5-6 the limitation “directing light energy onto each container traveling in said path in a **plane** at an angle to the axis of the container”. It is unclear what exactly the recited plane refers to. Does it refer to a horizontal plane perpendicular to the axis of the container (32) and parallel to the direction of translation of the container?

Clarification is required. Further, it is unclear what is meant by the phrase “a light path coplanar with the incident light energy and with said axis” of lines 10-11. Does it mean that a plane in which the light beam (36) directed at an angle to the axis of the container and a plane in which the reflected light beam portions (40, 44) are disposed are the same? Clarification is required.

Claims not specifically mentioned above are rejected by virtue of their dependency on a rejected claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gast et al (6,172,355; hereinafter Gast) in view of Brand et al (4,822,171; hereinafter Brand).

Regarding claims 1, 5 and 9, as far as the claim is understood, Gast shows in Figs.1 and 10A an apparatus for inspecting containers (22) as they are rotating about their axes while traveling along an abutment assembly (abstract). Gast does not specifically mention that its device is able to measure wall thickness of a container. However, Brand et al discloses an optical apparatus (col.4, lines 37-64) for measuring the wall thickness of transparent objects comprising a light source (1), an illumination lens system (3, 5, 7), a light sensor (13), an imaging lens system (12) and an information processor (18). It would have been obvious to one of ordinary skill in the art include the optical apparatus of Brand et al in the device of Gast in view of the ability to obtain more information (i.e. wall thickness) about containers passing by.

Regarding claim 2, Gast discloses the recited rail (68, 70).

Regarding claim 3, Gast discloses a linear rail (col.6, line 17).

Regarding claim 4, the limitations therein are shown in Fig.1 of Gast and Fig.1 of Brand.

Art Unit: 2878

Regarding claim 6, the limitations therein are inherently disclosed by the device of Gast in view of Brand.

Regarding claim 7, the limitation therein is disclosed in col.7, lines 51-55 of Gast.

Regarding claim 8, the limitations therein are disclosed by Gast (col.8, lines 36-40; col.7, lines 51-55).

Regarding claims 10 and 11, Brand shows in Fig.1 an illumination lens system includes a mirror (5) and an actuator (6).

Regarding claim 12, the limitation therein is shown in Fig.4 of Brand.

Regarding claim 13, Gast discloses an encoder (61 in Fig.16).

Regarding claim 14, the limitation therein is shown in Figs.1 and 10A of Gast.

Regarding claims 15-19, the specific optic elements and configurations utilized would have been obvious to one of ordinary skill in the art in view of design requirements, the desired performance, manufacturing cost, the availability of parts, etc.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Williams et al (EP 0320139 A2) is cited for disclosing an apparatus for measuring the wall thickness of transparent containers. Ringlien (6,256,095) is cited for an apparatus for inspecting the sealing surface area of a container.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Pyo whose telephone number is 703-308-4841. The examiner can normally be reached on Mon-Fri (with flexible hour), First Mon. off.

Art Unit: 2878

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Porta can be reached on 703-308-4852. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



Kevin Pyo
Primary Examiner
Art Unit 2878

Pkk
9/24/03